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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,893	03/16/2004	Charles C. Adams	330235.00009	4627

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EXAMINER	
FLETCHER, MARLON T	

ART UNIT	PAPER NUMBER
2837	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application No.	Applicant(s)	
	10/802,893	ADAMS ET AL.	
	Examiner	Art Unit	
	Marlon T. Fletcher	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitations of claim 2, do not provide any limitation different from claim 1, wherein the basically recites the same limitation claimed in claim 1.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6, 13, 19, 25, 33, and 39, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the claim recites "a musical instrument tuning device comprising a tuner...." The are no elements that make up the tuner. The claim recites a tuning device comprising a tuner. The claim is indefinite and fails to point out the subject matter of the invention.

In claim 13, the claim recites a tuning device. There are no limitations for tuning. Again, the claim is indefinite and fails to point out the subject matter of the invention.

In claim 19, the claim recites a method of making a tuner. There are no actual steps for **making** a tuner. Again, the claim is indefinite and fails to point out the subject matter of the invention.

Claims 25, 33, and 39, have the same type of deficiencies as claims 6, 13, and 19. In making the claims broad, the applicant fails to recite the limitations that are required to define the invention which the applicant intends to claim. The claims are indefinite in that the claims do clearly recite the invention.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-4, 6-11, 13-17, 19-23, 25-31, are rejected under 35 U.S.C. 103(a) as being unpatentable over Skubic (2002/0088333) in view of Pogoda (4,365,537).

Skubic discloses a tuning device (figure 2) for a musical instrument, comprising: a tuner having a programmable stroboscopic light source adapted for tuning a musical instrument (abstract; and figure 1); and a control button (24) on the tuner for programming a state of the stroboscopic light source.

Skubic discloses the tuning device, wherein the tuner includes a control button (24) for enabling the stroboscopic light source.

Skubic discloses the tuning device, wherein the tuner includes a display (25) for indicating a state of the stroboscopic light source.

Skubic discloses an audio mic (18) for picking up sounds.

Skubic discloses that the tuner converts audio signals to a frequency indicator (abstract).

Skubic does not disclose the tuner having a second utility.

However, Pogoda discloses a utility device (pick) integrated with a tuner, wherein the utility device has a secondary function which is independent of the tuning activity associated with the musical instrument (abstract; and figure 1).

Pogoda discloses the tuning device wherein the tuner has a tear-drop shape (figure 1). No patentable is given to the shape being a tear drop shape. Shape are not patentable subject matter. The shape further does not provide any special effect or utility that is useful.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Pogoda with the teachings of Skubic, because Pogoda enhances the tuning device of Skubic by providing another function of the tuner.

6. Claims 5, 12, 18, 24, 32, are rejected under 35 U.S.C. 103(a) as being unpatentable over Skubic in view of Pogoda as applied to claims 1-4, above, and further in view of Capano (2004/0139841) and (Farley – non patent literature provide on IDS).

Neither Skubic nor Pogoda discloses a utility device being one of a key ring, lighter, utility tool, pin light, jewelry, cell phone, card, or watch.

However, Farley discloses a tuner having a second utility of being a key ring. Capano disclose a tuner which is a wrist band which could be considered to be jewelry.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Farley and Capano with the teachings of Skubic and Pogoda, because the teachings allow the a plurality of utilities that can be combined with the tuner.

7. Claims 33-38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Skubic.

Skubic is discussed above. Skubic further disclose a plurality of strobe lights (figure 1),

Skubic does not disclose that the tuner comprises a card.

However, Official Notice is taken with respect to it being well known in the art to place an integrated circuit with in a card.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the well known teachings in the art with the teachings of Skubic, because the teachings allow the tuner to be compact easily transportable.

8. Claims 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skubic in view of Capano and Murata (5,768,127).

Both Skubic and Capano are discussed above. Capano discloses a wrist band which is worn in the same manner as a wrist watch or time keeping device.

Neither Skubic nor Capano discloses a tuner integrated into a watch.

Murata discloses a wristwatch with an integrated circuit for transmitting data.

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Murata with the teachings of Skubic and Capano, because the teachings would provide an tuner integrated into a watch, wherein the tuner would have a second function of timekeeping.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-w, F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MTF
June 08, 2006

MARLON T. FLETCHER
PRIMARY EXAMINER